



GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-73

[FMR Case 2021-102-1; Docket No. GSA-FMR-2021-0020;

Sequence No. 1]

RIN: 3090-AK42

Federal Management Regulation; Real Estate Acquisition

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is finalizing an amendment to the Federal Management Regulation (FMR) part regarding real property acquisition to clarify the policies for entering into lease agreements for high-security space in accordance with the Secure Federal Leases from Espionage And Suspicious Entanglements Act, also referred to as the Secure Federal LEASEs Act.

DATES: *Effective:* **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]**

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202-208-2956 or chris.coneeney@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FMR Case 2021-102-1.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule at 86 FR 71604 on December 17, 2021, to implement section [4] of the Secure Federal Leases from Espionage And Suspicious Entanglements Act, also referred to as the Secure Federal LEASEs Act, Pub. L. No. 116-276, 134 Stat. 3362 (2020) (the "Act"), which requires the disclosure of ownership information to Federal lessees leasing high-security space to enable the lessee to mitigate potential national security risks. The Act was signed into law on December 31, 2020 (available at <https://www.congress.gov/116/plaws/publ276/PLAW-116publ276.pdf>). The Act imposes disclosure requirements regarding the foreign ownership and control, particularly "immediate owner," "highest level owner" and "beneficial ownership," of prospective lessors of "high-security leased space" (i.e., property leased to the Federal Government having a security level of III or higher). GSA implemented section 3 and section 5 of the Act through the interim rule General Services Administration Acquisition Regulation (GSAR) Case 2021-G527 (86 FR 34966) (available at <https://www.federalregister.gov/documents/2021/07/01/2021-14161/general-services-administration-acquisition-regulation-immediate-and-highest-level-owner-for>).

The requirements of the statute are applicable to Federal lessees, defined by the Act as leases by the U.S.

General Services Administration (GSA), the Architect of the Capitol, "or the head of any Federal agency, other than the Department of Defense, that has independent statutory leasing authority." The Act is not applicable to the Department of Defense (DOD) or to the intelligence community. Section 2876 of the FY 2018 National Defense Authorization Act (Pub. L. 115-91) already provides DOD similar authority to obtain ownership information with respect to its high-security leased space.

The Act addresses national security risks identified in the U.S. Government Accountability Office (GAO) report, "GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners," dated January 2017 (GAO-17-195) (available at <https://www.gao.gov/assets/gao-17-195.pdf>). This report found certain high-security Federal agencies were in buildings owned or controlled by foreign entities. According to the report, most Federal tenants were unaware the spaces GAO identified were subject to foreign ownership or control, exposing these agencies to the heightened risk of surreptitious physical or cyber espionage by foreign actors. The report also noted GAO could not identify the owners of approximately one-third of the Federal Government's high-security leases because such ownership information was unavailable for those buildings.

This final rule addresses the following specific requirements in Section 4 of the Act:

- Identification of beneficial ownership information.
- Development of a governmentwide plan for identifying all immediate, highest-level, and beneficial owners of high-security leased space.
- Submission of a corresponding report to Congress.

This final rule addresses the annual submission of ownership disclosures to GSA from agencies operating under either independent statutory leasing authority or a grant of delegated leasing authority from GSA.

What is a "Beneficial Owner"?

Unlike the direct control-based immediate owner and highest-level owner, the Act defines the term "beneficial owner" to include any person that, through a contract, arrangement, understanding, relationship, or otherwise, exercises control over the covered entity or has a substantial interest in or receives substantial economic benefits from the assets of the covered entity, with some exceptions.

The Act is one of several recent examples of congressional concern about foreign ownership and control and congressional action in the world of government contracting to help address potential national security concerns. See, e.g., FY 2021 National Defense Authorization Act (NDAA) (P.L. 116-283), § 819, Modifications to Mitigating Risks Related to Foreign Ownership, Control, or Influence of DOD Contractors and Subcontractors; § 885,

Disclosure of Beneficial Owners in Database for Federal Agency Contract and Grant Officers; § 6403, Beneficial Ownership Information Reporting Requirements, and, as of June 30, 2021, GSAR 2021-G527, Immediate and Highest-Level Owner for High-Security Leased Space.

Because of the related rulemaking, there are several definitions of “beneficial owner” (or “beneficial ownership”). In an attempt to standardize the data provided to Congress, the definitions stated in the regulatory text need to be used to have consistency in the collection of information.

**The United States Securities and Exchange Commission
(SEC) Definition**

Section 885 (Disclosure of beneficial owners in database for Federal agency contract and grant officers) of the FY 2021 NDAA (P.L. 116-283)¹ states that beneficial ownership has the meaning given under section 847 (Mitigating risks related to foreign ownership, control, or influence of Department of Defense contractors or subcontractors) of the FY 2020 NDAA (P.L. 116-92)². Section 847 does not specifically define beneficial ownership but requires “beneficial ownership” to “be determined in a manner that is not less stringent than the manner set forth in section 240.13d-3 of title 17, Code of Federal

¹<https://www.congress.gov/bill/116th-congress/house-bill/6395/text>

²<https://www.congress.gov/bill/116th-congress/senate-bill/1790/text>

Regulations.” This Code of Federal Regulations reference is the SEC definition³. The SEC definition mainly concerns the beneficial owner of a security (e.g., stock/bond/option for a corporation), not the corporation or company-at-large.

Corporate Transparency Act Definition

The Corporate Transparency Act (CTA) definition can be found at section 6403 of the FY 2021 NDAA. This section defines “beneficial ownership” as, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.

Financial Crimes Enforcement Network Definition

The U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) issued a final rule implementing the beneficial ownership information reporting requirements of the CTA, at 87 FR 59498 (September 30, 2022, to be codified at 31 CFR 1010). These regulations go into effect on January 1, 2024.

Under the rule, a beneficial owner includes any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company. The rule defines the

³[https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.13d-3#p-240.13d-3\(a\)](https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.13d-3#p-240.13d-3(a))

terms "substantial control" and "ownership interest." In keeping with the CTA, the rule exempts five types of individuals from the definition of "beneficial owner."⁴

Secure Federal LEASEs Act Definition

A "beneficial owner" is "with respect to a covered entity, each natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, (i) exercises control over the covered entity; or (ii) has a substantial interest in or receives substantial economic benefits from the assets of the covered entity, subject to certain exceptions listed in the section 2(1)(B)."

GSA's Interpretation

GSA interprets that the SEC definition is too limiting for use in the representation clause because it is concerned with the beneficial owner of a security rather than a company or corporation. The Secure Federal LEASEs Act, the CTA, and the subsequent FinCEN definitions are similar. The definitions similarly characterize a beneficial owner as someone who (i) controls a covered entity, or (ii) has a substantial interest. The primary difference between the two is related to "substantial interest." The Secure Federal LEASEs Act states that a beneficial owner is someone who "...has a substantial interest in or receives substantial economic benefits from

⁴<https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>

the assets of the covered entity” while the CTA and FinCEN definitions says a beneficial owner “owns or controls not less than 25 percent of the ownership interests of the entity.” GSA interprets that the FinCEN definition meets the intent of the SFLA (Pub. L. No. 116-276) definition. As such, GSA intends to base its definition on the FinCEN definition because it is more specific (“not less than 25 percent” as opposed to having to define “substantial interest” or “substantial economic benefits”) and because it would allow GSA to leverage FinCEN’s efforts to collect beneficial owner information for all corporations. GSA does not believe this definition to be “not less stringent” than the SEC definition.

Other agencies may choose whether to replicate GSA’s approach on how to collect the information by referring to GSA’s rule for General Services Administration Acquisition Regulation (GSAR) Case 2021-G527 at 86 FR 34966 and GSAR Case 2021-G522 at 86 FR 73219. However, to have a consistent approach to the information GSA provides Congress, agencies must follow the definitions outlined in this final rule.

Covered entities already provide certain information on immediate and highest-level ownership, per Office of Management and Budget (OMB) Control Numbers 9000-0097, 9000-0185, and 3090-0324. However, covered entities will need to provide additional disclosure of creditors or other

entities who may be deemed beneficial owners if they either exercise substantial control over the covered entity or own or control not less than 25 percent of the ownership interests of the covered entity. Therefore, property owners will need to take this provision into account when considering financing options for leasing high-security space to the Federal Government.

II. Discussion of the Final Rule

A. Summary of Significant Changes

As published in the proposed rule, GSA added subpart D to address the authorities, definitions, applicability, and information collection associated with the Secure Federal LEASEs Act. GSA also revised section 102-73.5 to expand the scope of the regulation in subpart D to apply to Federal agencies exercising independent leasing authority in addition to those operating under or subject to the authorities of the Administrator of General Services.

B. Analysis of Public Comments

In the proposed rule published in the Federal Register at 86 FR 71604 on December 17, 2021, GSA provided the public a 60-day comment period, which ended on February 15, 2022. GSA received one public comment in response to the proposed rule:

"With heightened international tensions from some foreign actors toward the US and increased threat of physical and cyber espionage, I agree and recommend that

Sections 3 and 4 of the Secure Federal LEASEs Act be accepted under the noted Assumptions from GSA that (1) this rule will impact mainly Federal agencies and (2) the impact of this rule will not significantly change the way current Federal lessors interact with the GSA. It is very concerning that there are a large number of Federal agencies with high-security leases that are unaware they are leasing from foreign entities. Awareness and reporting of foreign lessors should indeed help close any security loopholes while not providing any further financial burden on the general public. Further, GSA should adopt the preferred [Corporate Transparency Act] CTA definition for the beneficial owner. Lastly, it is recommended that the GSA preferred method for reporting, Alternative 3, be adopted for the implementation of these rules."

This comment was supportive of the rule. GSA did not change the regulatory text of the definition from the published proposed rule, but did add a sentence to clarify that it is based on the FinCEN definition for beneficial owner. The FinCEN definition was issued pursuant to the CTA and was published following GSA's proposed rule. GSA is using the FinCEN definition because it is more specific than the definition in the Secure Federal LEASEs Act and is congruent with the CTA definition.

GSA is also using Alternative 3 from the Analysis of Alternatives discussed in section VII. Regulatory Impact

Analysis to collect and aggregate the disclosures from other Federal lessees and report it to Congress as directed in section 4 of the Act.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OIRA has determined that this rule is a significant regulatory action and, therefore, was subject to review under subsection 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

OIRA has determined that this rule is not a "major rule" as defined by 5 U.S.C. § 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. §§ 801-808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. GSA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the Federal Register.

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq., because it applies to agency management or personnel. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of OMB under 44 U.S.C. § 3501 et seq.

VII. Regulatory Impact Analysis

The cost and benefit impacts of amending FMR part 102-73 regarding real property acquisition to reflect current laws and regulatory policies to implement the section 4 requirements outlined in SFLA are discussed in the analysis below, which was developed by GSA in consultation with agency procurement officials and the GSA Office of Leasing.

No public comments were received on this analysis, so GSA is finalizing this analysis without change as discussed below.

(A) Federal Leasing - Current Processes

Potential offerors are required to report certain ownership information to the System for Acquisition Management, including immediate or highest-level owners.

(B) Federal Government Leasing - General Security Framework

As outlined within the Interagency Security Committee (ISC) Standard and the GSA Leasing Desk Guide, the facility security level (FSL)⁵ is set by the U.S. Department of Homeland Security - Federal Protective Service (FPS) and the client agency, in consultation with GSA as part of the requirements development phase of a lease acquisition. If the client agency and FPS have not already conferred, the Federal lessee and GSA must coordinate with the necessary parties to set the appropriate level of security before the solicitation is drafted. This level of security will be memorialized by the Security Organization as a preliminary FSL, which serves as a precursor to the final FSL generally made with the tenants' post-award. *The Risk Management Process for Federal Facilities: An Interagency Security*

⁵ A categorization based on the analysis of several security-related facility factors, which serves as the basis for the implementation of countermeasures specified in ISC standards. (See ISC Standard, March 2021, available at https://www.cisa.gov/sites/default/files/publications/The%20Risk%20Management%20Process%20-%202021%20Edition_1.pdf)

*Committee Standard*⁶ outlines the policies required for federal tenants in consultation with the responsible Security Organization to determine, set, and modify levels of security. The ownership information collected through this rule will not affect the FSL designation.

(C) Federal Government Leasing - Determining Countermeasures

Federal lessees follow the ISC Standard for physical security criteria (PSC) for Federal Facilities. The standard establishes baseline physical security countermeasures for each FSL. The standard defines the process for determining the appropriate security measures through the ISC Risk Management Process; it also covers any uncommon measures required to address the unique risks at a particular facility. The GSA Public Buildings Service Leasing Desk Guide currently uses the PSC to prescribe the process for determining appropriate countermeasures for a facility. Therefore, GSA assumes other federal agency lessees adhere to ISC standards, as well, within their leasing guides and use the criteria provided by ISC to calculate the level of security required for the tenants.

(D) Compliance Plan

GSA assumes the following steps would most likely be part of an agency's plan to collect and report owner

⁶See ISC Standard, March 2021, available at https://www.cisa.gov/sites/default/files/publications/The%20Risk%20Management%20Process%20-%202021%20Edition_1.pdf

disclosures using GSA's governmentwide plan and GSAR

552.270-33 and 552.270-34:

1. Governmentwide Plan and Regulatory Familiarization.

The agency reads and understands the governmentwide plan and potentially uses GSAR 552.270-33 and 552.270-34 for collection actions.

2. Workforce Training.

The agency must educate its purchasing/procurement professionals⁷ to heighten their familiarity with GSA's governmentwide plan's disclosure requirements (as applicable).

3. Compliance with the Revised Representation Clause.

The agency must identify and disclose whether entities do or do not have a foreign beneficial owner of leased space. If an affirmative disclosure is made for leases involving high-security space, GSA must be notified of the disclosure made in the representation in accordance with the schedule set forth in the GSA governmentwide plan.

(E) Benefits

This Act requires the disclosure of the identification of all individuals who own or benefit from partial ownership of a property that will be leased by the Federal Government for high-security use. The statute is in

⁷ GSA estimates that the purchasing/procurement professional requiring training as a result of this rule on average would be equal to a mid-career professional. The equivalent labor category used to capture cost estimates, therefore, is a GS-12, Step 5, or Journeyman Level 1.

response to GAO report GAO-17-195, titled "Federal Real Property: GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners" (available at <https://www.gao.gov/products/gao-17-195>) which indicated Federal agencies were vulnerable to espionage and other intrusions because foreign actors could gain unauthorized access to spaces used for classified operations or to store sensitive data. Agencies store law enforcement evidence and other sensitive data and are often unaware of foreign ownership of their office spaces. While many of the foreign owners identified in the 2017 GAO report were companies based in allied countries, such as Canada, Norway, Japan, or South Korea, other properties were owned and managed by entities based in more adversarial nations. The report noted Chinese-owned properties, in particular, presented security challenges because of the country's proclivity for cyberespionage and the close ties between private sector companies and the Chinese government. The GAO report highlighted the dangers posed by these properties, indicating that "leasing space in foreign-owned buildings could present security risks such as espionage, unauthorized cyber and physical access to the facilities, and sabotage."

The United States faces an expanding array of foreign intelligence threats by adversaries who are using

increasingly sophisticated methods to harm the Nation⁸. Threats to the United States posed by foreign intelligence entities are becoming more complex and harmful to U.S. interests.⁹ Foreign intelligence actors are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure and steal sensitive information and industrial secrets.¹⁰ The exploitation of key supply chains by foreign adversaries represents a complex and growing threat to strategically important U.S. economic sectors and critical infrastructure.¹¹

Additionally, by requiring “Beneficial Owner” information in the representation clause, Federal lessees will benefit by better understanding how an individual’s ownership position can provide them access that could prove problematic for certain agencies. Congress underscored that “money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures . . . across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the

⁸*National Counterintelligence Strategy of the United States of America 2020-2022.*

⁹*National Counterintelligence Strategy of the United States of America 2020-2022.*

¹⁰*National Counterintelligence Strategy of the United States of America 2020-2022.*

¹¹*National Counterintelligence Strategy of the United States of America 2020-2022.*

newly identified entity is yet another corporate entity, necessitating a repeat of the same process.”¹² The ability to engage in activity and obtain financial services in the name of a legal entity without disclosing the identities of the natural persons who own or control the entity – the natural persons whose interests the legal entity most directly serves – enables those natural persons to conceal their interests. And, as FinCEN has noted previously, such concealment “facilitates crime, threatens national security, and jeopardizes the integrity of the financial system.”¹³ The goal of the Act is to close security loopholes by directing Federal agencies to notify GSA whether foreign owners have a stake in high-security buildings leased by Federal agencies, either through foreign-incorporated legal entities or through ownership in United States-incorporated legal entities, particularly when the leased space is used for classified operations or to store sensitive data. While GSA and other Federal agencies have made positive changes in response to GAO’s 2017 report, this rule will help support current best practices being followed more uniformly throughout the Federal Government.

¹² Corporate Transparency Act, section 6402(4).

¹³ *Notice of Proposed Rulemaking: Customer Due Diligence Requirements for Financial Institutions*, 79 FR 45151, 45153 (August 4, 2014).

Finally, this rule enables Federal lessees to obtain information on foreign ownership and provide it to Federal occupant agencies.

(F) Public Costs

1. To estimate the aggregate burden to agencies of complying with the Act, the number of disclosures to obtain was calculated using numbers pulled from GSA's records and databases.¹⁴ As of December 2022, GSA has approximately 7,711 active leases. Of the 7,711, approximately 1,228¹⁵ (or 16 percent) of the leases are for high-security lease space (lease space in a facility with a security level of III, IV, or V).

2. GSA also delegates leasing authority to several agencies, which are required to follow GSA's policies. GSA estimates there are 6,000 leases represented by these agencies with the delegated leasing authority from GSA.¹⁶ GSA does not have data available that identifies which of these leases are for high-security space. GSA assumes that these agencies with delegated leasing authority have a similar profile to GSA's for high-security leased space to total portfolio space, i.e., 16 percent. This would bring the total number of high-security lease space for agencies

¹⁴ If not otherwise stated, numbers related to leases are provided by the GSA Office of Leasing through surveying its internal databases.

¹⁵ The GSA Office of Leasing provided this number by surveying its internal database.

¹⁶ This information is based on internal inventory data sources provided by the GSA Office of Leasing.

with delegated leasing authority to 960 (6,000 x 16 percent).

3. Agencies possessing independent leasing authority are generally not required to follow GSA's policies, except for subpart D of 41 C.F.R. part 102-73, made final by this rule. GSA indicates that there are 41 agencies with independent statutory leasing authority.¹⁷ Further, GSA estimates there are 25,995 leases represented by these agencies.¹⁸ GSA does not have data available to identify which of these leases are for high-security space. GSA assumes these agencies have a similar profile to GSA's for high-security leased space to total portfolio space, i.e., 16 percent. This would bring the total number of high-security leased space for agencies with independent leasing authority to 4,159 (25,995 x 16 percent).

4. Based on historical data maintained by GSA's Office of Leasing, GSA estimates that 6 percent of its high-security leased space will be solicited for a new contract each year (6 percent of 1,228 = 74 leases). These solicitations result from a mix of expiring high-security leases or new requirements for high-security facilities. GSA assumes these trends will continue for the time horizon

¹⁷ The GSA Office of Government-wide Policy used the Federal Real Property Profile Management System to determine the number of agencies with a lease authority indicator of independent statutory authority.

¹⁸ This information is based on publicly available data sources provided by the GSA Office of Government-wide Policy Real Property Policy Division. <https://www.gsa.gov/policy-regulations/policy/real-property-policy/asset-management/federal-real-property-profile-frpp/federal-real-property-public-data-set>

outlined by this regulatory impact analysis. Based on historic bid rates and high current vacancy levels, GSA further estimates that 3 lessors will make offers for each of these high-security lease procurements for a total of 222 offers (74 high-security leases awarded x 3 lessors competing for each solicitation = 222). GSA assumes the same profile for agencies with delegated leasing authority. This would bring the total number of high-security leased space solicited for a new contract each year for agencies with delegated leasing authority to 58 (6 percent of 960 = 58 leases). GSA further estimates that 3 lessors will make offers for each of these delegated leasing authority agency high-security lease procurements for a total of 174 offers (58 high-security leases awarded x 3 lessors competing for each solicitation = 174). GSA assumes the same profile for agencies with independent leasing authority. This would bring the total number of high-security leased space solicited for a new contract each year for agencies with independent leasing authority to 250 (6 percent of 4,159 = 250). GSA further estimates that 3 lessors will make offers for each of these independent leasing authority agency high-security lease procurements for a total of 750 offers (250 high-security leases awarded x 3 lessors competing for each solicitation = 750).

5. Since 2014, GSA has averaged approximately 31 renewal options per year for high-security leases (equal to

approximately 17 percent of all renewals options during the same period) and averaged approximately 106 extensions for existing high-security leases (also equal to approximately 17 percent of all extensions during the same period). GSA assumes the same trend will continue in subsequent years. GSA assumes the same profile for agencies with delegated leasing authority. This would bring the total number of renewal options per year for high-security leases for delegated leasing authority agencies to 16 (equal to approximately 17 percent of all renewals options during the same period) and the total number of extensions for existing high-security leases for delegated leasing authority agencies to 64 (also equal to approximately 17 percent of all extensions during the same period). GSA assumes the same profile for agencies with independent leasing authority. This would bring the total number of renewal options per year for high-security leases for independent leasing authority agencies to 83 (equal to approximately 17 percent of all renewals options during the same period) and the total number of extensions for existing high-security leases for independent leasing authority agencies to 333 (also equal to approximately 17 percent of all renewals options for delegated and independent leasing authority during the same period).

6. GSA processed 340 novations per year for the last two years (therefore, approximately 4 percent of leases

resulted in a novation (340/7,711)). GSA does not have data on how many of those were related to FSL III, IV, or V facilities. GSA will assume 16 percent of those novations were for FSL III, IV, or V leases, based on the percentage of high-security leased space in GSA's portfolio as noted above. Therefore, it is assumed 54 novations were processed for high-security leases in the last year (16 percent of 340 novations = 54). GSA assumes the same profile for agencies with delegated and independent leasing authority. This would bring the total number of novations per year for delegated leasing authority agencies to 240 (4 percent of 6,000 leases = 240) and the total number of high-security lease novations per year for delegated leasing authority agencies to 38 (16 percent of 240 novations = 38). GSA assumes the same profile for agencies with independent leasing authority. This would bring the total number of novations per year for independent leasing authority agencies to 1,040 (4 percent of 25,995 leases = 1,040 novations) and the total number of high-security lease novations for independent leasing authority agencies to 166 (16 percent of 1,040 novations = 166).

A breakdown is provided in the table below.

Part Above		GSA	Delegated Authority Agencies	Independent Lease Authority Agencies
1, 2, 3	Leased Space	7,711	6,000	25,995
	High-Security (HS) Leased Space	1,228	960	4,159

4	HS New Procurements	74	58	250
	HS New Offers	222	174	750
5	HS Renewals	31	16	83
	HS Extensions	106	64	333
6	Novations	340	240	1,040
	HS Novations	54	38	166
Total GSA, Delegated Authority Agencies, and Independent Lease Authority Agencies HS Leases Baseline	Total of HS Lease Baseline	6,347		
Total GSA, Delegated Authority Agencies, and Independent Lease Authority Agencies New HS Leases Baseline		382		

(G) Public Total Costs

GSA notes that the amendment to FMR part 102.73 - Real Estate Acquisition regarding real property acquisition to reflect current laws and regulatory policies carries no direct cost to the public. Section 4 of the Secure Federal Lease Act focuses solely on the government's required activities for the planning, disclosures and notifications, reporting, and implementation of the Act by GSA and Federal agencies to Congress.

(H) Government Cost Analysis

During the first and subsequent years after publication of the rule, leasing acquisition members (which

include a combination of Leasing Contracting Officers, Lease Administration Managers, Realty Specialists, and General Counsel) will need to learn about GSA's government-wide plan and disclosure requirements. GSA estimates this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation, on average, of a GS-12 leasing acquisition member, unless otherwise specified. GSA assumes that leasing acquisition members will, on average, stay consistent in subsequent years. The same numbers and assumptions apply to agencies with delegated and independent leasing authority, as well.

For consistency, the number of leases to be reviewed match the numbers in the "Total GSA, Delegated Authority Agencies, and Independent Lease Authority Agencies HS Leases Baseline" row (6,347 combined) and "Total GSA, Delegated Authority Agencies, and Independent Lease Authority Agencies New HS Leases Baseline" row (382 combined) found in the table in subsection VII.(F)(6), above.

Below is a list of compliance activities related to regulatory familiarization that GSA anticipates will occur:

1. Government Compliance with Public Law 116-276.

Subsection 4(a) Development of a Governmentwide Plan

The Government must educate its leasing acquisition members through a governmentwide plan to

heighten their familiarity with the collection and reporting of the beneficial owners of high-security leased space.

- a. GSA calculates it will take 160 hours in the second year to create the plan. GSA estimates this cost by multiplying the time required to develop and approve the plan by the estimated compensation, on average, of a GS-12 step 5 (based on the 2023 pay table for Rest of US). Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$9,806 (= 160 hours × \$61.29 × 1)**.

GSA estimates that it will take 5 hours in outyears to update the plan on a yearly basis. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$306 (= 5 hours × \$61.29 × 1)**.

- b. GSA calculates it will take 80 hours in the second year to submit the plan to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. GSA estimates this cost by multiplying the time required to submit the plan by the estimated compensation, on average, of a GS-12. Therefore, GSA calculated the total

estimated cost for this part of the rule to be

\$4,903 (= 80 hours × \$61.29 × 1) .

- c. GSA estimates that it will take approximately 2,178 leasing acquisition members 30 minutes (0.5 hour¹⁹) to complete training related to the plan.²⁰ Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$66,745 (= 0.5 hours × \$61.29 × 2,178) .²¹**

After the initial training, GSA estimates it will take 15 minutes (0.25 hours²²) to maintain training related to the plan. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$33,372 (= 0.25 hours × \$61.29 × 2,178) .**

- d. GSA estimates the 41 agencies with independent leasing authority may review GSAR sections 522.270-33 and 522.270-34 in a limited capacity to mirror GSA's policies. Therefore, GSA estimates those agencies may spend less time than GSA reviewing the GSAR provisions as they may write, review, and become familiar with their own

¹⁹The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgment. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

²⁰ Combined number of GSA lease members and lease members from agencies with delegated and independent leasing authority.

²¹ All totals in the Government Cost Analysis section are rounded.

²²The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgment. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

internal policies. GSA estimated, on average, a GS-12 would spend 1 hour per year becoming familiar with GSAR sections 522.270-33 and GSAR 552.270-34; therefore, it would take independent leasing agencies 30 minutes (0.5 hours²³) to review the GSAR. This would only occur for those agencies in the first year of collection and reporting. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$1,256 (= 0.5 hours × \$61.29 × 41)**.

- e. GSA calculates it will take 60 hours in the first year of collection and reporting for agencies with independent leasing authority to create their own policies in response to GSA's plan. GSA estimates this cost by multiplying the time required to develop the policy by the estimated compensation, on average, of a GS-12. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$150,773 (= 60 hours × \$61.29 × 41)**.

GSA calculates it will take 2.5 hours in outyears to review the policy and, if necessary, revise the policy. Therefore, GSA calculated the total

²³The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgment. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

estimated cost for this part of the rule to be

\$6,282 (= 2.5 hours × \$61.29 × 41).

- f. GSA estimates agencies with independent leasing authority would spend 30 minutes (0.5 hours²⁴) training their workforce on their new policy. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$44,619 (= 0.5 hours × \$61.29 × 1,456).**

GSA estimates agencies with independent leasing authority would spend 15 minutes (0.25 hours²⁵) training their workforce on their policy in subsequent years. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$22,310 (= 0.25 hours × \$61.29 × 1,456).**

2. Government Compliance with Public Law 116-276.

Subsection 4(b), Disclosures and Notifications

- a. GSA estimates that, of the baseline high-security lessors for GSA and agencies with delegated leasing authority, each year 10 percent²⁶ (or 219 lessors) will respond affirmatively that the offeror “does” have an “immediate owner,” or “is” owned or controlled by another entity (or

²⁴The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgment. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

²⁵The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgment. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

²⁶ GSAR Case 2021-G527

"highest owner"), or "does" involve a "foreign entity," or any combination of the foregoing, and it will take leasing acquisition members approximately 5 hours to collect this information. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$67,113 (= 5 hours × \$61.29 × 219)**.

GSA estimates it will take approximately 5 hours to collect the information submitted by GSA lease contracting officers and agencies with delegated leasing authority. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$67,113 (= 5 hours × \$61.29 × 219)**.

- b. GSA estimates that, of the new high-security lessors for GSA and agencies with delegated leasing authority, each year 10 percent²⁷ (or 13 lessors) will respond affirmatively that the offeror "does" have an "immediate owner," or "is" owned or controlled by another entity (or "highest owner"), or "does" involve a "foreign entity," or any combination of the foregoing, and it will take leasing acquisition members approximately 1 hour to submit this information to GSA. Therefore, GSA calculated the total

²⁷ GSAR Case 2021-G527

estimated cost for this part of the rule to be

\$797 (= 1 hours × \$61.29 × 13) .

- c. GSA estimates it will take approximately 5 hours to collect the information submitted by GSA and agencies with delegated leasing authority.

Therefore, GSA calculated the total estimated

cost for this part of the rule to be **\$797 (= 1**

hours × \$61.29 × 13) .

- d. GSA estimates that, of the baseline high-security lessors for agencies with independent leasing authority, each year 10 percent (or 416 lessors) will respond affirmatively that the offeror "does" have an "immediate owner," or "is" owned or controlled by another entity (or "highest owner"), or "does" involve a "foreign entity," or any combination of the foregoing, and it will take leasing acquisition members approximately 5 hours to collect this information. Therefore, GSA calculated the total estimated cost for this part of the rule to be **\$127,483 (= 5 hours × \$61.29 × 416) .**

GSA estimates it will take approximately 5 hours to collect the information submitted by agencies with independent leasing authority.

Therefore, GSA calculated the total estimated

cost for this part of the rule to be \$127,483 (= 5 hours × \$61.29 × 416).

- e. GSA estimates that, of the new high-security lessors for agencies with independent leasing authority, each year 10 percent (or 25 lessors) will respond affirmatively that the offeror "does" have an "immediate owner," or "is" owned or controlled by another entity (or "highest owner"), or "does" involve a "foreign entity," or any combination of the foregoing, and it will take leasing acquisition members approximately 1 hour to collect this information. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$1,532 (= 1 hours × \$61.29 × 25).

GSA estimates it will take approximately 1 hour to collect the information submitted by agencies with independent leasing authority. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$1,532 (= 1 hours × \$61.29 × 25).

3. Government Compliance with Public Law 116-276.

Subsection 4(c), Report and Implementation

- a. GSA estimates it will take 8 hours beginning in year 3 to submit an annual report to the Committee on Homeland Security and Governmental

Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$490 (= 8 hours × \$61.29 × 1).

4. Government Compliance with Public Law 116-276.

Subsection 4(c)(3), Secure Federal Lease Act

Consideration of Implementation Improvements

a. GSA estimates it will take a total of 40 hours in years 3 and 4 to review and consider commercial technology offerings to improve data collection. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$2,452 (= 40 hours × \$61.29 × 1).

b. GSA estimates it will take a total of 8 hours in years 5-10 to review and consider new commercial technology offerings to improve data collection. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$306 (= 8 hours × \$61.29 × 1).

5. Government Total Costs

The total cost of the above Cost Estimate is \$605,207 in the first year after publication.²⁸ The

²⁸ Total costs calculated by GSA

total cost of the above Cost Estimate in subsequent years is \$72,432 annually.²⁹

The following is a summary of the estimated costs calculated for a 10-year time horizon at a 3- and 7-percent discount rate:

SUMMARY	Total Costs
Present Value (3 percent)	\$1,052,989
Annualized Costs (3 percent)	\$123,442
Present Value (7 percent)	\$912,461
Annualized Costs (7 percent)	\$129,914

6. Overall Total Costs

The overall total cost is equal to subsection VII.(H), Government Total Costs, above, as there is no direct cost to the public based on the amendment to FMR part 102.73 as noted in subsection VII.(G), above.

(I) Analysis of Alternatives

The preferred alternative is the process laid out in the Act whereby GSA annually collects disclosures from Federal lessees and then reports that information to Congress.

²⁹ Total costs calculated by GSA

Alternative 1: GSA could take no regulatory action to implement this statute. However, this alternative would not provide any implementation and enforcement of the important national security measures imposed by the law. Moreover, the general public would not experience the benefits of improved national security resulting from the rule as detailed above in subsection VII.(E). As a result, we reject this alternative.

Alternative 2: Federal lessees could send information on their activity directly to Congress, rather than in a centralized approach through GSA. However, GSA rejects this approach given the likelihood of inconsistent collection and reporting of data along with potential additional costs and burden to government agencies.

Alternative 3: GSA could follow the implementation approach based on section 4 of the Act directing GSA to aggregate disclosures from each Federal lessee one year after the implementation of the plan described in subsection (a) of the Act, and each year thereafter for 9 years, submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the status of the implementation of the plan, including the number of disclosures. This is the preferred method, which will allow GSA to help close security loopholes by designing a verification system that

identifies a property's owners if the space would be used for high-security purposes. In addition, this rule will help support current best practices being followed more uniformly throughout the Federal Government. Finally, this rule enables Federal lessees to obtain information on foreign ownership and provide it to relevant Federal occupant agencies.

List of Subjects in 41 CFR Part 102-73

Administrative practice and procedure, Federal buildings and facilities, Rates and fares.

Robin Carnahan,
Administrator of General Services.

Therefore, GSA amends 41 CFR part 102-73 as set forth below:

PART 102-73—REAL ESTATE ACQUISITION

1. The authority citation for part 102-73 is revised to read as follows:

AUTHORITY: 40 U.S.C. 121(c); sec. 3(c), Reorganization Plan No. 18 of 1950 (40 U.S.C. 301 note); sec. 1-201(b), E.O. 12072, as amended by E.O. 13946, 85 FR 52879, Aug 27, 2020; Pub. L. 116-276, 134 Stat. 3362.

2. Revise § 102-73.5 to read as follows:

§102-73.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service, operating under, or subject to, the authorities of the Administrator of General Services; except for subpart D of this part, which applies to Federal agencies exercising independent leasing authority in addition to those agencies operating under or subject to the authorities of the Administrator of General Services.

3. Add subpart D to read as follows:

Subpart D—Secure Federal Leases from Espionage and Suspicious Entanglements Act

Sec.

102-73.310 What are the governing authorities for this subpart?

102-73.315 What definitions apply to this subpart?

102-73.320 Who must comply with these provisions?

Information Collection

102-73.325 What information must a covered entity provide to the Federal lessee?

102-73.330 What information must a Federal lessee provide to GSA?

102-73.335 When must Federal lessees provide information to GSA?

102-73.340 How must Federal lessees provide information to GSA?

Subpart D—Secure Federal Leases from Espionage and Suspicious Entanglements Act

§ 102-73.310 What are the governing authorities for this subpart?

The governing authorities are the Secure Federal Leases from Espionage and Suspicious Entanglements Act, Public Law 116-276, 134 Stat. 3362 (2020) (the "Secure Federal LEASEs Act"), and 40 U.S.C. 121(c).

§ 102-73.315 What definitions apply to this subpart?

Beneficial owner means:

(1) With respect to a covered entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise--

(i) Exercises substantial control over the covered entity; or

(ii) Owns or controls not less than 25 percent of the ownership interests of the covered entity.

(2) This definition is based on the Department of the Treasury Financial Crimes Enforcement Network's Beneficial Ownership Information Reporting Requirements at 31 CFR part 1010.

Control means, with respect to a covered entity:

(1) Having the authority or ability to determine how a covered entity is used; or

(2) Having some decision-making power for the use of a covered entity.

Covered entity, as defined by the Secure Federal LEASEs Act, means:

(1) A person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group; or

(2) Any governmental entity or instrumentality of a government.

Federal lessee, as defined by the Secure Federal LEASEs Act, means:

(1) The Administrator of General Services, the Architect of the Capitol, or the head of any Federal agency, other than the Department of Defense, that has independent statutory leasing authority; and

(2) Does not include the head of an element of the intelligence community.

Highest-level owner means the entity that owns or controls an immediate owner of the offeror or lessor, or that owns or controls one or more entities that control an immediate owner of the offeror or lessor. No entity owns or exercises control of the highest-level owner.

Immediate owner means an entity, other than the offeror or lessor, that has direct control of the offeror or lessor. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

§ 102-73.320 Who must comply with these provisions?

Each Federal lessee and covered entity must cooperate and comply with these provisions.

Information Collection

§ 102-73.325 What information must a covered entity provide to a Federal lessee?

Sections 3 and 4 of the Secure Federal LEASEs Act require that, before the Government may enter into a lease agreement or novation with an entity for high-security leased space (defined as Facility Security Level III, IV, or V), offerors must disclose whether the immediate owner, highest-level owner, or beneficial owner of the leased space, including an entity involved in the financing thereof, is a foreign person or entity, including the country associated with the ownership entity.

§ 102-73.330 What information must a Federal lessee provide to GSA?

Federal lessees must provide the following information when sharing their Secure Federal LEASEs Act disclosures with GSA:

- (a) Name of the agency conducting the procurement;
- (b) Date of disclosure;
- (c) Solicitation number or Contract number (for novations);
- (d) Type of Action (prior to entering a lease or prior to a novation agreement);

(e) Total number of affirmative disclosures made (note - in some instances, there may be more than one owner-of-a-type. If more than one affirmative disclosure is made, include all disclosures);

(f) As part of the total number of disclosures made, was one of the disclosures an affirmative immediate owner disclosure? If so, how many?;

(g) As part of the total number of disclosures made, was one of the disclosures an affirmative highest-level owner disclosure? If so, how many?; and

(h) As part of the total number of disclosures made, was one of the disclosures an affirmative beneficial owner disclosure? If so, how many?

§ 102-73.335 When must Federal lessees provide information to GSA?

Federal lessees must submit the required information on an annual basis.

§ 102-73.340 How must Federal lessees provide information to GSA?

Federal lessees must submit the required information to GSA by email at *SFLA@gsa.gov*.